



OFFICE OF THE GOVERNOR

RICK PERRY
GOVERNOR

September 5, 2007

The Honorable Paul D. Clement
Solicitor General of the United States
Office of the Solicitor General
950 Pennsylvania Avenue, NW, Room 5143
Washington, D.C. 20530-0001

RE: *Riverkeeper Inc., et al. v. EPA*

Dear General Clement:

I am writing to urge you to file a petition for *certiorari* to the United States Supreme Court to overturn the Second Circuit's decision on the Environmental Protection Agency's (EPA's) cooling water intake structures rule. (Phase II rule). *Riverkeeper, Inc. v. EPA*, Nos. 04-6692-ag(L) et al. (2d Cir. 2007) ("*Riverkeeper II*"). The decision, if left unchallenged, will have a substantial impact on the State of Texas and, nationally, on the availability of safe, reliable and cost-effective energy supplies.

As you are aware, the Phase II rule established national performance standards for certain electric generating facilities to minimize environmental impacts associated with cooling water intake structures. I strongly support that goal. However, the rule also recognized the importance of providing states the flexibility to consider costs in the selection of the technology to be used at individual facilities to meet the goal. As a state that is responsible for issuing permits under the Clean Water Act, having that flexibility is critical to our ability to protect the environment, while also ensuring an economical and reliable supply of energy.

The *Riverkeeper II* decision raises legal and public policy issues of national significance regarding environmental protection and energy supplies that warrant Supreme Court review. Furthermore, the decision takes a position regarding consideration of costs that is not only inconsistent with 30-years of practice, but also inconsistent with decisions of other federal courts that have considered the same question in analogous situations.

Requesting Supreme Court review of the *Riverkeeper* decision will provide an opportunity to restore the ability of states to make decisions that appropriately address two important goals –

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protecting the environment and providing energy.

For these reasons, I urge you to seek Supreme Court review of this decision. If the United States is not prepared to seek Supreme Court review on its own, I urge that you at least support the petitions that will be filed by the electric utility industry to reverse this case.

Thank you for your consideration of my input on this important matter.

Sincerely,

A large, stylized handwritten signature in black ink that reads "Rick Perry". The signature is written in a cursive, flowing style with a prominent "R" and "P".

Rick Perry
Governor

RP:zcp

cc: The Honorable Samuel Bodman, Secretary, Department of Energy
Mr. Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency
Mr. James Connaughton, Chairman, White House Council on Environmental Quality
Texas Congressional Delegation

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US EPA

From: Rick Perry

Date: September 19, 2007

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Comments:

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